



California Regional Water Quality Control Board Central Coast Region



Linda S. Adams.
*Secretary for
Environmental Protection*

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Arnold Schwarzenegger
Governor

Agricultural Order Renewal

Public Comments and Alternatives to

02/01/2010 Preliminary Draft Staff Recommendations

Group 1: Comment Letters

Comment ID	Affiliation	Date Received
FB1	Santa Barbara County Farm Bureau	3/31/2010
FB2	Monterey County Farm Bureau	4/1/2010
FB3	San Luis Obispo Farm Bureau	3/30/2010
FB4	Santa Clara County Farm Bureau	4/1/2010
FB5	Santa Cruz County Farm Bureau	4/1/2010
FB6	California Farm Bureau	4/1/2010





Santa Barbara County Farm Bureau

Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

March 30, 2010

Via First-Class Mail & Email

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Jeffery S. Young, Chairman of the Board
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, Ca. 93401

Re: CCRWQB Request for Public Comment on Preliminary Draft Agricultural Order
dated February 1, 2010

Dear Mr. Young

The Santa Barbara County Farm Bureau represents over 700 diversified agriculturalists in Santa Barbara County. Agriculture continues to be the county's major producing industry, with a gross annual production valued at over \$1.7 billion dollars. It provides a strong base for our economy and through the multiplier effect has a local impact in excess of \$2.2 billion dollars.

Our members supported the initial Conditional Ag Waiver that your Board adopted in 2004, which focused on collaboration in achieving improvement in water quality over time. Compliance with the 2004 Conditional Waiver resulted in significant achievements, including a high percentage of growers enrolling in the program. They participated in numerous education and outreach programs along with the development and implementation of Farm Plans that focused on the management of their distinct operations.

Our members also supported the formation of Central Coast Water Quality Preservation inc., a non-profit corporation founded by farmers to administer the cooperative monitoring program as outlined in the initial 2004 Conditional Ag Waiver. The role of Preservation Inc. was to collect water quality data from 50 sites throughout Region 3 and begin over time to develop trends that could be used to help growers understand water quality issues in their watersheds. The data collected was used to determine long-term trends in water quality and conduct follow-up monitoring to better identify areas of concern.

The monitoring process began in 2005 with the results just beginning to show developing trends in water quality. We understand that it takes at least ten years of monitoring data to develop a meaningful, defensible scientific trend in water quality. Based on this information, it will take an additional five years of monitoring the 50 sites found throughout region 3 before any scientifically based conclusions on water quality trends can be established.

We supported the initial Conditional Ag Waiver because it was based on a good faith effort from both the agricultural community as well as your Board and staff members who understood the complexities of a diverse agricultural industry found throughout region 3, with the goal of improving water quality over time.

In Late 2007, members of the Ag community met with Allison Jones of your staff to begin discussions on the process for renewing the Conditional Ag Waiver. At that time Allison did not believe there would be any substantive changes to the initial waiver and seemed pleased with its' success. It was not until December of 2008 that we finally received an invitation from Roger Briggs to participate in the Ag Panel process. It was that process that brought together agriculturalists, environmentalists and Regional Board staff, lead by Allison Jones that was instrumental in negotiating the initial Ag Waiver.

During the initial meeting of the Ag Panel in December of 2008, we quickly learned that the

Region 3 Agricultural Water Quality Program was changed to the Agricultural Regulatory Program due to a vision alignment effort by you staff. This Ag Panel process ultimately failed due to a change in staffing from the regional board and their reluctance to collaborate and incorporate ideas from panel members concerning the waiver renewal.

We are extremely disappointed in the direction your staff took in writing the proposed preliminary draft of the new conditional waiver dated February 1 2010.

The draft order contains stringent new conditions that will subject Region 3 growers to the most rigorous regulatory program in the state. It contains redundant regulations concerning existing perennial, intermittent, and ephemeral streams along with riparian or wetland area habitat. There are strict controls for the use of pesticides which is already regulated by the Department of Pesticide regulation along with the California Department of Food and Agriculture. Riparian and wetland area habitat is already being regulated by a variety of different regulatory agencies including but not limited to, The U. S. Fish and Wildlife Service, The State Department of Fish and Game, The Army Corp of Engineers and local land use regulations already in place. Therefore riparian and wetland protection should not be included as part of a proposed new Ag Waiver.

The Farm Plan which is currently used as part of the Conditional Waiver will be revised to include irrigation management, pesticide management, nutrient management, salinity management, sediment and erosion control and aquatic habitat protection. The nutrient management portion of the plan must be certified by a professional crop advisor and updated annually. This requirement should also be removed from the proposed Ag waiver, as it is completely unnecessary. The Farm Plan should reflect management practices put in to place by the grower that result in meaningful water quality improvement, that is understood by both the grower and the regulator. On Farm business records that have no relevance to water quality should not be included in the Farm Plan.

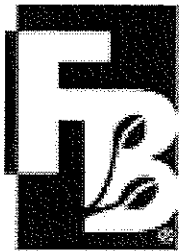
The Goal of the Ag waiver that was adopted in 2004 was to improve water quality over time. Our member growers have stepped up and followed through on every component of the existing waiver. There are always areas in a new program that could be improved upon. We believe that heavy handed regulation is not the way to improve water quality. We have proven that over the last 5 years a collaborative approach to improving water quality is working. The Santa Barbara County Farm Bureau respectfully asks that you direct staff to re-visit their vision alignment plan and focus on working with, instead of regulating agriculturalists out of business and together, develop a long term program that will attain the goal of improving water quality over time in Region 3.

Sincerely,



Kevin Merrill, President
Santa Barbara County Farm Bureau

cc: Russell M. Jefferies Vice Chair
Monica S. Hunter, Board Member
Gary C. Shallcross, Board Member
David T. Hodgins, Board Member
John H. Hayashi, Board Member
Tom P. O' Malley, Board Member
Mr. Roger Briggs, Executive Officer
Ms. Angela Schroeter, Agricultural Regulatory Program Manager
Mr. Howard Kolb, Agricultural Order Project Lead Staff



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March 31, 2010

Chairman Jeffrey Young
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

RE: Preliminary Draft Conditional Waiver for Irrigated Agriculture of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Chairman Young,

Thank you for the opportunity to provide comment on the Preliminary Draft Agricultural Order (proposed Ag Waiver) and for scheduling a workshop on May 12th that will allow a discussion of how we can reach mutual objectives for water quality improvement on the Central Coast. During and since the Ag Panel process, there has been grit and determination to show that the Regional Board has specific authority to do or require certain things. While it is true that the Regional Board has specific authority for the protection of water quality, simply exercising that authority without regard for diversity within the regulated community does not result in cooperation and commitment for the long-term.

The agricultural community and partnerships like AWQA* (Agricultural Water Quality Alliance) have already embarked on a long-term commitment to water quality improvement based on science and cost-effective problem solving. The Regional Board has an opportunity to join this effort by ensuring the next Ag Waiver is practical and not over-reaching and duplicative.

REGIONAL BOARD MANAGEMENT RESPONSIBILITIES ARE CRITICAL -

There were two areas acknowledged by all Ag Panel participants to be critically necessary improvements on the last Ag Waiver or any renewal.

- 1. IMPROVED INFORMATION AND DATA MANAGEMENT;**
- 2. IMPLEMENTATION OF A TRANSPARENT, BALANCED AND EFFECTIVE ENFORCEMENT APPROACH.**

These themes re-occurred again and again in Ag Panel discussions as documented by your staff. Nothing in the proposed Ag Waiver or the accompanying materials raises confidence that the Water Board's critically important role as program administrator will address these areas.

Clearly related to Improved Information and data management, is a cry for increased accountability to the public. Some members of the public want to review farm plans prepared by their farming neighbors apparently to judge for themselves whether the farmer is doing enough or in the way that public member believes it should be done. One wonders how strong this cry would have become if

Group 1- FB2
May 12, 2010 Workshop
Preliminary Draft Agricultural Order

Farm Bureau serves as a collective voice for farmers and ranchers and provides information, benefits and services. Farm Bureau cooperates with other agricultural organizations to fulfill its purpose of working for the solutions to the problems of the farm, the farm home and the rural community.

Cooperative Monitoring Program (CMP) data, agreed to be publically available, had actually been provided without hesitation when requests were made to the Regional Board from the very beginning of the existing program. The anger with which members of the public have spoken of such delays further emphasizes the need for improved information, data management, and public accountability by the Regional Board. Requesting additional information and turning the farm plan into public information, as the proposed Ag Waiver does, will not fix that problem.

COMPREHENSIVE, VERIFIABLE, AND ENFORCEABLE -

We have heard other stakeholders call for these objectives for an Ag Waiver. The current Ag Waiver has elements that provide for each one of these objectives. The Ag Alternative proposal builds upon these elements for even greater effectiveness.

Comprehensive: the CMP data linked to an education element form the information base from which the farmer evaluates on-farm practices and addresses problems that are found.

Verifiable: as on-farm practices are being adaptively managed and improved over time, CMP data will begin to show improved results. In addition, Farm Plans provide verification when reviewed during an on-site visit by regional board staff.

Enforceable: careful record keeping and management of submitted information by the Regional Board should be used to schedule the verification step. There should be a clear and fairly administered set of steps followed when verification is not possible.

GROWERS RESPOND TO SCIENCE WITH INDEPENDENT SOLUTIONS -

University of California Cooperative Extension (UCCE) and other researchers have produced valuable research results on every topic imaginable and growers have used their work to become both efficient and productive. As an example in Monterey County, the last 15 years has not seen increases in agricultural water use or other inputs such as fertilizer though production of agricultural products has increased three-fold.

QUAIL CREEK EXAMPLE:

For only a short two years has CMP data and upstream data been available for growers to review. Even less time than that has the staff of Central Coast Water Quality Preservation Inc. (CCWQP) been able to meet with growers in small groups or one-on-one to review and discuss the data. From the Quail Creek watershed group example, 100% of growers who reviewed CMP and upstream data and also had access to confidential, on-farm water quality data devised operational or practice changes aimed at specific water quality issues. Those growers continue to adaptively manage their practices as seasons and other operational changes occur. Of these growers, farming on ranches in close proximity to one and other, on similar soils and with similar crops, no two practice changes implemented were the same.

CONCENTRATION VERSUS FLOW :

Better analysis of the CMP regional data was missing from the first Ag Waiver and should be part of the next Ag Waiver. However, this is not addressed in the proposed Ag Waiver. Several months after the growers of Quail Creek had made their operational changes, nothing was showing up in the data that made us all cheer. Finally, frustrated growers feeling they'd done their best said they were positive that less water was leaving their farms. **That is when Central Coast Water Quality Preservation Inc. staff began to look more closely at FLOW DATA.**

While concentration and flow data were both collected as part of the CMP, flow data were not being analyzed. This came as a shock to growers funding the program.

Better analysis revealed:

- Many significant downward trends in stream flow
- These downward trends in flow were much larger than any upward trends in concentrations
- Concentrations of organophosphate pesticides declined in Salinas & Santa Maria
- Loading of OP and other constituents to downstream water bodies from CMP areas declined substantially

(Central Coast Water Quality Preservation Inc., 2010)

However, by the time it was made clear that we are actually moving in the right direction with **FLOW VOLUMES** from agricultural watersheds and therefore **REDUCING LOADING** of pollutants – a negative tide of sentiment had already turned against agriculture by those who don't believe that enough is being done or done in the right way. We are concerned that some Regional Board staff members were also of that mind and under took to substantially change the current Waiver in the belief that it was not working.

ALTERNATIVE AG PROPOSAL -

As you are aware California Farm Bureau, seven county Farm Bureaus, Grower-Shipper Associations, the Salinas Valley Water Coalition, Monterey County Vintners and Growers, Central Coast Vineyard Team, Western Growers Association and numerous other agricultural groups across the region have prepared an Alternative proposal for discussion at this workshop. Our hope is that you will direct staff to use our proposal as the basis and core of the next Ag Waiver.

Naysayers will continue to say that they must be the judges of what growers do on their private property and they will demand more. But those voices do not belong to those who are committed to incremental change and improvement and they should not be allowed to distract any of us from the mission at hand.

TECHNICAL CONSIDERATIONS -

We have identified several examples of conflicting demands in the proposed Ag Waiver, where the actions growers would have to take to meet one set of requirements would most likely put them out of compliance with another set of requirements. Please re-evaluate these areas and seek input from local, technical experts.

As noted by the Cooperative Monitoring Program (CMP) Technical Program Manager in a December 2009 letter to your Board,

"Today's water quality issues exist in spite of these best efforts [by farmers], and it is a hard truth that the current state of knowledge is probably insufficient to completely address all the issues. Increased implementation of the current suite of BMP's [best management practices] and conservation practices simply may not be enough to achieve some water quality objectives. "

In support this statement, agronomic experts are quoted below with reference to several of the proposed Ag Waiver's requirements.

Farm Bureau serves as a collective voice for farmers and ranchers and provides information, benefits and services. Farm Bureau cooperates with other agricultural organizations to fulfill its purpose of working for the solutions to the problems of the farm, the farm home and the rural community.

Tailwater:

Requirement for growers to implement management practices sufficient to eliminate irrigation runoff within 2 years –

“Water is important to cool season vegetables – they have high moisture requirements, and water stress reduces yield. Poorly aggregated sandy soils are susceptible to surface crusting, which increases runoff. Farms may be able to reduce the percent of applied water lost to runoff, but reductions to 0% may not be possible without tailwater retention systems. Drip irrigation can reduce the percent of applied water lost to runoff, but it is not always economically feasible to convert entirely to drip.” (From a Summary of Technical Panel Presentations, Soledad 4.14.09, Dr. Michael Cahn, UC Cooperative Extension, Salinas).

Without other options, some growers will attempt to hold all water on farms which will result in unintended consequences such as a direct conflict with food safety objectives; blow-outs from storm water damage and sediment delivered downstream; reduction of flows to the point that it negatively affects in stream aquatic habitat.

Sediment:

Requirement for growers to implement management practices sufficient to eliminate sediment and turbidity above water quality standards within 3 years –

“Vegetated ditches, in field conditions without food safety/pest harborage concerns, can reduce sediment in tailwater enough for the effect to be measureable, but generally not enough to be relevant for water quality objectives.” (From a Summary of Technical Panel Presentations, Soledad 4.14.09, Dr. Michael Cahn, UC Cooperative Extension, Salinas).

Nutrients:

Requirement for growers to implement management practices sufficient to eliminate nutrients and salts to meet water quality standards in irrigation runoff within 4 years –

- *“Nitrate is completely soluble in soil – it moves with the water. Water leaving an appropriately fertilized root zone will almost always have >10 ppm NO₃-N; it is unlikely to ever meet a concentration-based water quality standard.*
- *Nitrates in the irrigation source water strongly influences nitrate levels in surface and ground discharges. Runoff from high-nitrate well water is unlikely to be reduced in nitrate concentration by the time it reaches the edge of the field.*
- *There is no known method for removing nitrates from tile drain water.”*

(From a Summary of Technical Panel Presentations, Soledad 4.14.09, Dr. Tim Hartz, UC Davis).

Background & Non-Agricultural Exceedences:

It is important to note that nutrient and sediment levels from natural (background) or non-agricultural origins can exceed proposed numeric standards and are often present together with agricultural activity.

Beneficial Uses:

“Numeric objectives associated with beneficial uses on some watersheds may be unattainable. For example, is “drinking water supply” an appropriate beneficial use for a stream that does not (cannot) meet a nitrate standard of <10ppm?” (From a Summary of Technical Panel Presentations, Soledad 4.14.09, Dr. Marc Los Huertos, CSUMB).

It will be difficult to make progress with Central Coast water quality if we have unattainable water quality objectives for some water bodies due to the beneficial use designations of those water bodies. The Central Coast Basin Plan allows the Water Board to make exceptions to the beneficial use of “drinking water” for “water in systems for conveying or holding agricultural drainage waters.” This

bases evaluation in agricultural areas and might allow watershed efforts to make significant progress more quickly if they are not held to a "drinking water", or other unattainable, standard unnecessarily.

ECONOMIC IMPACT -

Economic analyses performed by the County of Monterey indicate that the proposed Ag Waiver could significantly impact the local economy. It does not appear that the Water Board has evaluated or considered these economic impacts in any detail.

Among the economic impacts analyzed by others in letters submitted to this board are:

- **Loss of farmland - including prime farmland and farmland of statewide importance**
In a geographic information systems evaluation of only 3 watersheds by Monterey County staff it is estimated that 14,343 acres would be out of production as a result of the proposed 100 foot riparian buffer requirement. Please review the details of a letter submitted to you by the Monterey County Board of Supervisors which explains that the analysis was based upon a 150 foot total buffer to capture both the Water Board's proposed riparian/habitat buffer and a crop production/food safety buffer that the proposed Ag Waiver would necessitate.
- **Loss of Property Tax Revenue** : no number was calculated but this loss would add to the over \$30 million budget deficit in Monterey County.
- **Multiplier Affect from agriculture as the chief economic driver** : \$2.9 billion in crop production sales value expands to approximately \$5.2 billion in direct and indirect economic activity.

The above figures were developed independently of Farm Bureau and are cited here to bring to your attention the significant potential economic impacts that are not evaluated in the proposed Ag Waiver. The costly regulatory plan suggested in the proposed Ag Waiver is unique to this region and could place us at a competitive disadvantage in the state. We request that the Water Board fully analyze and consider these impacts.

OVERLAPPING REGULATORY JURISDICTIONS –

The proposed Ag Waiver may go beyond the jurisdiction and common practice of the Water Boards by attempting to indirectly regulate land use and pesticide use.

Land use is regulated by a myriad of local agencies and governing boards including but not limited to: the County Board of Supervisors, Planning Commission, Local Area Formation Commission (LAFCO), County of Monterey and other local jurisdictions. How does the Water Board intend to implement the proposed Ag Waiver on riparian buffers and farmland overlapping with other jurisdictions and affecting local land use policies?

Pesticides and pesticide use is regulated by the California Department of Pesticide Regulations (DPR) and the County Agricultural Commissioner system. The proposed Ag Waiver creates new buffer requirements and no-spray zones which has already caused confusion among pesticide applicators and growers. We request that the Regional Board allow the DPR to complete its process toward carefully considered and fully vetted policies rather than seeking to duplicate and confuse that effort by inserting additional, related requirements in the Ag Waiver.

REASON TO STAY THE COURSE –

Today there should be no doubt remaining, even among the most skeptical of observers, that water quality in Central Coast agricultural watersheds has, in fact, begun to see documented improvement. I realize that for a short, 5 year data set, this is optimistically stated. Ten years of data is the time frame most often cited as an optimal minimum for trend analysis.

But there is indeed reason for optimism if we continue on our current course of using science as our guide through research and evaluation with and by growers, allowing them to adaptively manage their practices and find cost effective improvements that actually work when and where they are needed.

Thank you for taking the time to conduct this workshop and consider the best path forward.

Sincerely,



Traci Roberts, Environmental Resources Coordinator
Monterey County Farm Bureau

CC: John Hayashi, Board Member
David T. Hodgins, Board Member
Dr. Monica S. Hunter, Board Member
Russell M. Jeffries, Vice Chairman of the Board
Gary C. Shallcross, Board Member
Tom P. O'Malley, Board Member



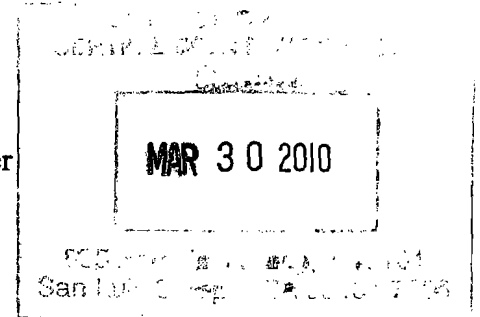
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April 1, 2010

Ms. Angela Schroeter, Agricultural Regulatory Program Manager
Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401



Re: Comments and Recommendations on the Preliminary Draft Agricultural Order

Dear Ms. Schroeter:

As requested in the Transmittal Memo, the San Luis Obispo County Farm Bureau would like to take this opportunity to express our thoughts and concerns regarding the Preliminary Draft Agricultural Order No. R3-2010-00XX. I have divided this letter into three sections. First is a general statement, followed by comments and concerns with the written proposed Order and in the third section suggestions in relation to water quality and agriculture.

General Statement: The 2004 Irrigated Agriculture Conditional Waiver (Order) was successful because of a cooperative process between the stakeholders (both agricultural and environmental) and the Regional Staff and Board. Agriculture is committed to achieving long-term solutions to water quality and does not support the proposed Order's unrealistic standards and timelines. Unfortunately, the Draft Order shows a lack of willingness on the part of the agency to understand agriculture's needs and concerns or to work with agriculture. In the Draft Order there is scant acknowledgement that agriculture has stepped up to the plate and that over 95 percent of the area farmers are enrolled in and are implementing the program. In fact, this biased Report impugns the Cooperative Monitoring Program (CMP) with no acknowledgement that CMP data has shown improvement in some watersheds (page 9). As an example, instead of acknowledging that 70 percent of the CCAMP and CMP test sites meet drinking water standards and protection of aquatic life, on page 12 the Report inflames the issue with the statement of "significant nitrate pollution in major agricultural areas of the Central Coast Region". This is a blatant bias in an effort to justify the proposed heavy handed regulation.

The proposed Order, as written will result in serious consequences to farms and could be so costly as to dismantle farms on the Central Coast, especially small farms. It is for this reason that the agricultural community has developed an alternative waiver proposal. It is our hope that the Regional Water Quality Control Board Staff and Board members will look seriously at agriculture's alternative proposal and work with agriculture to design a program that will actually address improving water quality in the Central Coast without putting farmers out of business.

Letter to Ms. Angela Schroeter
April 1, 2010

We ask that the Regional Water Quality Control Staff and Board support agriculture's "Preliminary Alternative Agricultural Proposal in Response to the Preliminary Staff Recommendations for an Agricultural Order to Control Discharges from Irrigated Lands".

Review Draft Order:

1. Within the first 20 pages of the Preliminary Draft Order the Report paints an ugly broad brush picture of Central Coast agriculture as creating widespread pollution. The Report on page 15 proclaims in the very first sentence that "groundwater contamination from nitrate severely impacts public drinking water and then admits that only 17 percent of the tested wells had exceedances. This biased positioning is unacceptable. In the effort to impugn agriculture, the draft hardly acknowledges that, other than in three areas (the Pajaro, Northern [lower] Salinas River and Santa Maria River), most of the Central Coast has good water quality. The Report's depiction of agriculture inappropriately sets the stage to paint the whole Central Coast, whether polluting or not, with the same heavy handed regulation. A more accurate portrayal of the Central Coast agriculture is critical.
2. One of the most objectionable determinations in the Report is on page 8, Key Element #4 states that, there will be "monitoring and reporting requirements that allow the Water Board, dischargers, and the public to determine that the program is achieving its stated purpose(s) and/or whether additional or different MPs or other actions are required". To give the unknowledgable/uninformed public the right to dictate farming practices is a complete reversal of the positive direction of the current water quality program. One likely result of this requirement will be frivolous lawsuits which will severely impact the ability of farmers to continue to produce the low cost food and fiber the consumer demands.
3. On page 22, the Report states that the Water Board "is addressing priority agricultural water quality issues ..." "... focused on the most intensive agricultural areas ...". This statement is not borne out in the actual "Waste Discharge Requirements" which place all irrigated agriculture under the same regulation.
4. "Low Risk" discharges are discussed in various places in the Report, but raises more questions as to who, what and how one qualifies. Additionally, with the definition of discharger (page 32), the likelihood if anyone ever qualifying as a "low risk" discharger is extremely remote.
5. Many of the questions under "Low Risk" is how does one demonstrate effective implementation of IPM if almost every pesticide (table page 35-37) is considered as having "a high potential to degrade/pollute surface water"? If even such common pesticides/herbicides as *Round-Up®*, whose active ingredient is Glyphosate, is on the above referenced list, then the possibility of meeting a low risk category is truly a joke.

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April 1, 2010

6. It is stated on page 23, that a farmer that is able to qualify as "low risk" will not be "subject for individual water quality monitoring and reporting". From this statement one can only extrapolate, this means that those who do not qualify as "low risk" will be subject to the expensive individual monitoring and reporting. Whether you are "low risk" or not, this flies in the face of the cooperative monitoring program which has provided significant data and assistance in water quality improvement since 2004.
7. The Report states that "education is an important component of an irrigated lands program", yet in Attachment 2 it is only "encouraged rather than required". The explanation is that the improvement in water quality can not be measured from having taken 15 hours of education. This is looking at education with blinders on. Without education where does one learn about good irrigation management practices?
8. Once again, on page 24, the Report has stated that individual on-farm water quality monitoring data will be reported to the Board offices *and will be available to "the public regarding compliance with the Order"*. This is one major reason that individual monitoring and reporting is not acceptable to the farmer. The uninformed, maybe well intended, public will be directing and determining the practices for farming. This is not acceptable.
9. On page 24, aside from the plan becoming a public document when submitted to the Board offices, having the Regional Board office review the Plan while on the farm site is a far more effective means of understanding what the Farm Plan is addressing and if the implementation is working.
10. The definition of a discharger on page 32 includes an owner and operator of irrigated lands that has "the potential to discharge waste that could directly or indirectly reach water of the State ...". This definition makes all farmers dischargers whether or not there is tailwater or no actual discharge from irrigation or stormwater. "Potential" is an open ended classification that includes any possibility including floods from unusual weather events. Staff explained that reason has to be used. Unfortunately, at this time, reason is not being exhibited in the Report and the staff response is of little comfort to the agricultural community.
11. The listing of "Pesticides With a High Potential to Degrade/Pollute Surface Water" (page 36) includes such common herbicides as RoundUp (active ingredient glyphosate) which is readily available to the general public. As currently written, this listing will prevent almost any farmer from qualifying as "low risk". When asked, staff stated that it was the amount and how the pesticide is used that would determine whether the farmer could qualify as "low risk". To date this explanation has no weight as there is no distinction in the Order as to how the pesticide could be used by a farmer to qualify as "low risk".

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12. Mercury is listed in the outlining of constituents for the surface water quality objective (page 43). As Mercury is a naturally occurring element in many soils of the Central Coast, how does the Order propose to regulate this? This naturally occurring metal is released by normal wind and rain processes in the normal earth breakdown/evolution. Mercury has not been an agricultural component for decades.
13. The concerns with the Report's proposed Farm Plan (beginning on page 59) includes numerous requirements that will mandate a professional or other knowledgeable person (at serious expense to the farmer) to determine such things as:
 - a. Potential for irrigation runoff and water quality impairment;
 - b. Evaluation of the potential for percolation or irrigation water below the root zone;
 - c. Counting pests and natural enemies (scouting) and degree-days;
 - d. Certification of the nutrient plan by a Certified Crop Advisor;
 - e. Development of a riparian function protection and restoration plan .All of these create major paperwork loads including mapping and photo documentation. These time consuming and expensive requirements only increase the paperwork without any appreciable benefits to water quality.
14. In the new Commercial Nursery section, among other requirements, prohibiting "rainwater from coming in contact with containerized plants" shows a serious lack of understanding of agriculture and would be prohibitively expensive to implement.
15. In the new Aquatic Habitat section on page 70, c states that there will be "no clearing of beneficial vegetation for food safety reasons". We can only assume that the Regional Water Quality Control Board is putting the welfare of mice, rats, opossums and other wildlife that can carry disease, over the welfare of the humans. This prohibition is placing the farmer in the middle of an untenable situation. The farmer is trying to provide a safe and healthy commodity, but he could be trapped between a food processor contract or violating the Regional Water Quality Control Board Order. This prohibition has not been reviewed for its serious unintended consequences. To say that this prohibition alone could put a farmer out of business is putting it mildly.
16. The Report places a minimum 50 foot riparian buffer (and up to 75 and 100 feet) on all perennial and intermittent streams. For row crop producers this can remove significant portions of a field from production. The question was asked at the Water Resources Advisory Committee (WRAC) meeting as to how much land would be lost to a buffer. With a 50 foot buffer a row crop farmer could lose 1 acre of production for every 871 feet. This is a significant loss and to the small farmer one less acre of production could mean the difference between a profit and no profit or even the productivity of the field. The response to the question at the WRAC was that the farmer would not be required to pull their grape vines or

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trees. This staff response was a non-answer as the concern is with row crops and the limit on agricultural activities, "such as equipment operation, in or near aquatic habitat". Is this part of the 1,000 feet issue? This is a very broad statement, left for wide interpretation and likely excludes any normal agricultural cultural practices.

17. The "*Riparian Function Protection and Restoration Plan*" requirements in the Farm Plan, page 67 and the alternative to the buffer stated on page 72, place this Plan in the category of an EIR which costs thousands of dollars to complete. Compliance with this plan will have to be certified by a "State registered Professional Engineer or Registered Geologist" and include the "implementation, measurable success criteria, maintenance and monitoring plan". To fulfill the aquatic life support and wildlife support, the Plan will require much more than just a Professional Engineer or Geologist. The geologists say that they can't fulfill the aquatic and wildlife section, this will need biologists and water quality engineers. Put this all together and the farmer is looking at an expensive document similar to an EIR.
18. The proposed timelines to achieve the numerous goals or milestones in the proposed Order appear arbitrary and in many cases unachievable. By working with the agricultural community there could be a better understanding of what it takes to comply for many of the mandates and with agriculture's help this could be resolved.
19. It was with total amazement and disbelief that the proposed Order would use as part of the "list of references consulted and/or cited" two op-ed articles.
 - a. Estabrook, Politics of the Plate from the now defunct Gourmet Magazine (references page 3, Gourmet November 2008) and
 - b. Slater, Leaf and Let Die from Sierra Club's magazine (references page 4, Seirra March/April 2009).

We find the use of these types of unscientific and seriously biased resources as part of the development of a significant regulatory program outside of the realm of logic. By what authority do these opinion pieces have any place in this Order?

Suggestions:

1. First and foremost, the Regional Staff and Board needs to engage the agricultural community in more than just superficial issues. (The Ag. Panel was told that their function was only to give input on the milestones for accomplishing the water quality requirements and that the requirements were already set.) The Agricultural Alternative Waiver Proposal must be given serious consideration. Our input is critical, we are the people who have to be able to pay for and implement the new Order and still make a living producing food and fiber. As stated in the beginning, it was through the process of working with agriculture that the 2004 "Order" was a success. Let's achieve this success once again.

Letter to Ms. Angela Schroeter
April 1, 2010

2. The Order needs to look at the difference in areas of the Central Coast, addressing those with water quality issues but not subjecting other areas, such as Santa Rosa Creek outside of Cambria (which Fish and Game said was one of the cleanest in the State) or other portions of the North Coast of San Luis Obispo County, with the same regulation as the Pajaro or Santa Maria River. With the limited resources available to both the government and private sector, truly focusing the Order on those areas needing significant improvements is a far wiser solution than a heavy handed all encompassing regulation. At a North Coast Farm Center meeting, one suggestion was to address water quality on a watershed by watershed basis as each watershed is unique. It was further suggested that those areas that are not designated as impaired remain as "status quo" in the new Order with no increase in regulation.
3. In the currently proposed Order the "low risk" category is unclear and wide open to interpretation. There is no way for the landowner/operator to know how or what they have to do to achieve "low risk" status. There needs to be substantial clarification as to the requirements such as
 - a. What pesticides can be used and in what ways (will RoundUp use eliminate the possibility of being classed as a "low risk" farmer);
 - b. What type of nutrient management plan will be needed (how much will such a plan cost and who has to write it); and
 - c. What type of measures does the Order propose to minimize erosion and sediment control?


There needs to be an explanation as to how someone "demonstrates" that they are "low risk". In the process of establishing this category, there must be consideration of the cost to the farmer to achieve this.

4. The Farm Plan should remain in the possession of the farmer (on site) with the ability of the Regional Board to view the plan while on the farm site the same as in the 2004 program. The public should not have the authority to determine a farmer's farming practices. Farms with proprietary information should not be required to divulge this information to the public and other farmers. This is their edge in a highly competitive market.
5. The current cooperative monitoring program must continue to be the main monitoring tool for the Order. For this to happen there must be funding to support this program.
6. Resist prematurely reaching conclusions as to water quality trends. Six years or less of data can not make a trend. It is acknowledged that it takes a minimum of ten years of data to have any reliable trend analysis. The current information is too limited to present a true picture at this time.
7. There must be more research and understanding of the pesticides that directly impact water quality.
8. On page 26, the Report states that "education is an important component of an irrigated lands program". It is a major part of the success of the 2004 waiver. This needs to be included as part of the renewed Order.

Letter to Ms. Angela Schroeter
April 1, 2010

In conclusion, we once again ask that the Regional Water Quality Control Board support agriculture's "Preliminary Alternative Agricultural Proposal in Response to the Preliminary Staff Recommendations for an Agricultural Order to Control Discharges from Irrigated Lands" and return to the table in a collaborative approach with the agricultural community to draft a long-term Order that will lead to true water quality improvement.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Gonzales", written in a cursive style.

RICHARD GONZALES
President

cc: Regional Water Quality Control Board Members



SANTA CLARA
COUNTY
FARM BUREAU

April 1, 2010

Jeffrey S. Young, Chair of the Board
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

RE: Central Coast Regional Water Quality Control Board Request for Public Comments on
Preliminary Draft Agricultural Order dated February 1, 2010

Dear Honorable Members of the Central Coast Regional Water Quality Control Board:

We would like to thank Regional Water Board members and staff for all the time and effort that has gone, and will go, into preparing the Ag Order. We appreciate your genuine concern for improving water quality on the Central Coast. We in the agricultural community share that concern. Through continued collaboration, we can agree on ways to achieve that goal.

All 173 pages of the preliminary draft Ag Order and supporting documents have been based on a single assumption: the existing ag waiver is insufficient. Fortunately, there is no evidence to support this basic assumption. We do not feel that sufficient time has passed to reasonably evaluate progress in achieving the existing Ag Order. The Central Coast TMDLs have had achievement timelines up to 50 years, illustrating the difficulty in proclaiming simplistic solutions. Irrigated agriculture is a key element in long term sustainability for the economies in the 7 Central Coast counties, accounting for nearly \$7 billion in direct economic benefits and countless jobs and income created throughout region. Unrealistic timelines will make local agriculture unsustainable. There has been insufficient time to evaluate the effectiveness of the program. Logic points to the need for more time to collect reliable data, not a complete overhaul of the existing program. The principles and practices in the existing Ag Order are more than sufficient to achieve water quality standards over an appropriate period of time.

There are a number of items in the preliminary draft that we believe are outside of the authority of the Regional Water Board. Water Boards have the responsibility and authority to regulate discharges to waterways. Property owners have the responsibility to not discharge polluted waters and authority over any legal activities on their properties. The preliminary draft Ag Order also contains provisions that are currently infeasible due to lack of technical resources. Growers on the Central Coast and throughout California attempt to

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use water as efficiently as possible. Irrigation water is an expensive input to agricultural production—typically costing \$300-\$400 per acre in Santa Clara County—and the cost provides an explicit incentive to use water effectively.

Buffers and Applications

Minimum buffer widths and protection of existing riparian and wetland habitat within an individual's private property are outside the Regional Water Board's authority. While the Board has the authority to set and enforce water quality standards for agricultural dischargers, it does not have the authority to tell growers how to manage their land to influence those discharges. Buffers are one of many effective tools used to improve the quality of water that is discharged from irrigated agriculture. However, requiring riparian habitat creates a broad mandate that could severely and adversely impact crop production on the Central Coast. Riparian buffers of 50 to 100 feet as proposed in the preliminary draft could take hundreds of acres out of production across the region. Furthermore, riparian buffers could put the public in harm's way by increasing animal traffic into crop areas thus increasing food safety risks in produce.

Buffers for pesticide ground applications should be based on wind and rain conditions. The goal is to prevent pesticide drift into nearby waterbodies, not to add regulations. For this reason, both the state and federal Environmental Protection Agencies regulate crop protection tools and dictate conditions for their use. In the same way, it is redundant and unnecessary for the Regional Water Board to require proper storage, disposal, and management of fertilizer. These practices are already regulated by other entities and enforced at the local level by county ag commissioners. Similarly, prohibiting foliar fertilizer applications 72 hours before a forecasted rain event is unnecessary. Fertilizer materials are expensive and growers go to great lengths to ensure those applications stay in place to achieve results, rather than literally throwing money down the drain. This issue cannot be addressed without the inevitable question: what is the source of information for a "forecasted rain event"? It seems highly unlikely that there is a single, reliable weather forecast source for the entire Central Coast region from San Mateo to Ventura.

Nurseries

Requiring nurseries to implement measures to prevent rainwater from coming into contact with containerized plants is misguided. In the new reality of on-going water scarcity, nurseries should be encouraged to use rain water rather than valuable potable water imported from the Sierras. The goal is to prevent contaminated runoff. Nursery growers should be given the flexibility to achieve these stormwater quality standards in a ways that fit their operations. Results are what we are seeking. Results, regardless of how they are achieved.

Irrigation Equipment and Scheduling

Attachment 3, the Preliminary Draft Report Staff Recommendations For Agricultural Order states "dischargers must implement appropriate irrigation scheduling duration and frequency". Growers' best efforts already include appropriate irrigation scheduling because appropriate irrigation decreases the need for expensive irrigation water and increases output gains by maximizing yields. If growers are not properly implementing appropriate

irrigation scheduling, more education, not more regulation, is needed.

Requiring “irrigation systems to minimize or eliminate irrigation runoff and percolation to groundwater beyond the root zone” is another example of unnecessary regulation that is already governed by common sense. Water must be taken in by the roots for plant growth. Thus, out of necessity, growers attempt to minimize runoff and percolation below the root zone. However, this is easier said than done. As Dwight D. Eisenhower once put it, “farming looks mighty easy when your plow is a pencil and you're a thousand miles from the corn field.” It is simple enough for everyone to agree that irrigation water should not move beyond the root zone and it is quite another thing to actually accomplish that goal. Achieving high distribution uniformity is in an excellent goal and is in a grower's best economic interest but prohibiting inefficient on-site management is outside the authority of the Board. The Regional Water Board is responsible for regulating irrigation discharges, not irrigation applications. These are both areas where additional resources are needed to assist growers. The growers are strongly interested in more help. During this past winter, we put on 4 irrigation efficiency workshops. 78 growers attended, spending 4 hours apiece, and they asked for follow-up workshops with more hands-on opportunities.

Tile Drains

Growers who will be hit hardest and most swiftly by the preliminary draft Ag Order are those who farm using tile drains. Significant portions of the Central Coast have high water tables that inhibit proper drainage. Although the soil in these areas is some of the most fertile in the world, it cannot be farmed without supplemental drainage systems to remove water from the root zone. We recognize that there are additional water quality challenges associated with tile drains. We encourage the Regional Water Board to maintain an attitude of collaboration and work with growers to develop alternatives for improving water quality from fields with high water levels. Additional time and funding is needed to develop low-cost systems before the categorical prohibition of tile drains.

Timeline

Board staff has set forth a very ambitious timeline for eliminating irrigation runoff. While we appreciate staff's zeal in pursuing water quality objectives, we do not think that the ambitious timeline is achievable. Furthermore, we believe that requiring the outright elimination of all irrigation runoff is beyond the Regional Water Board's authority. While the Board has the authority to regulate discharges that cause or contribute to water quality impairments, it does not have the authority to restrict clean discharges. Growers should have the opportunity to prove their irrigation runoff meets water quality standards and legally discharge irrigation water into any waterbody.

Eliminating irrigation runoff completely would necessitate substantial changes to existing infrastructure and would require significant capital outlays. The proposed timeline is extremely short and technically infeasible. The most likely approach to eliminating irrigation runoff would be to construct a catch pond. According to the preliminary draft, these ponds must be constructed in a way that will prevent leaching, which presumably means a lined pond. There is not enough qualified technical support in the region to design and construct sealed ponds on each of the farms in the region within such an extremely short period of time.

Reporting

There has been much resistance in the ag community to the reporting requirements in staff's proposal. We assert that the resistance is grounded in the law. According to section 13267 of the California Water Code, the Regional Water Board may require dischargers to furnish technical or monitoring program reports. The burden of the reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. We see little need for—and much time and expense involved in—the reporting requirements in the preliminary draft. What's more, the same code states “the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public”.

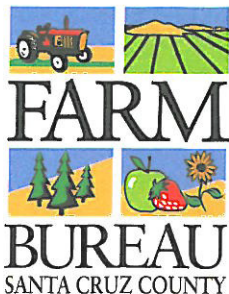
Thank you for your consideration of each of these points. We look forward to seeing these issues addressed in further versions of the Ag Order. Please do not hesitate to contact Jennifer Williams or MaryEllen Dick on our staff with questions or comments (408) 776-1684.

Sincerely,

Jan Garrod,
President

CC:

Russell M. Jefferies Vice Chair
Monica S. Hunter, Board Member
Gary C. Shallcross, Board Member
David T. Hodgins, Board Member
John H. Hayashi, Board Member
Tom P. O'Malley, Board Member
Mr. Roger Briggs, Executive Officer
Ms. Angela Schroeter, Agricultural Regulatory Program Manager
Mr. Howard Kolb, Agricultural Order Project Lead Staff



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April 1, 2010

Jeffrey S. Young, Chairman of the Board
Roger Briggs, Executive Officer
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401

Re: Draft Conditional Agricultural Waiver on February 1, 2010

Dear Messrs. Young and Briggs:

The Santa Cruz County Farm Bureau has reviewed the first Draft Conditional Agricultural Waiver released by the Central Coast Regional Water Quality Control Board (CCRWQCB) on February 1, 2010. We are concerned that the draft produced by CCRWQCB staff shows a poor working knowledge of commercial irrigated agriculture and seems to show little desire for an improvement in water quality attributed to agriculture. Instead it proposes a vast, detailed and, to some extent, meaningless regulatory regime focused on voluminous record keeping, submission of confidential business records and expensive on-farm monitoring. The proposed waiver sets the highest water quality standards imaginable and calls for attainment in the shortest period of time. It is far more preferable to structure the forthcoming Ag Waiver so that it, and the regulated industry, farmers, focus on improving water quality.

The staffs' purported analysis of the impacts of irrigated agricultural runoff to surface waters and groundwater is arbitrary, biased and not supported by existing research, much of which was funded by CCRWQCB with various Proposition grant funds. Several other groups have written in more detail about this adversarial misrepresentation of regional water quality. Santa Cruz County farmers can only address those items which are relevant to our county. While it is true that over pumping of the Pajaro aquifers has resulted in salt intrusion, this impairment is caused by the ocean, not by constituents related to commercial agriculture. It is overly simplistic, and indeed scientifically wrong, to suppose that the condition of groundwater

is the direct result of the land use directly above. Groundwater is impacted by uses far away, which may have occurred long ago. Current agricultural use may not be related to the present condition of aquifer directly beneath the farm. To suggest otherwise, as staff has, reflects a poor understanding of hydrology. Instead of addressing the excessive costs of proposed regulations, which is required by the Water Code, staff inflated the cost incurred by existing water users within the Central Coast.

Farm Plan: Staff's Draft proposed that farm plans will still be maintained by the grower. However, CCRWQCB staff can require a grower to send a copy to them, with 30 days notice, which will result in the contents of the farm plan becoming a public record. Every other industry regulated by CCRWQCB has the ability to designate records proprietary to their operation as confidential, which will not be made available to the public. This policy is codified by the Water Code. To force farmers to disclose their business practice to their competitors and the general public is unwarranted and not acceptable.

The farm plan as proposed by the staff Draft has grown into a monster of record keeping which is unrelated to water quality: "Farm Plan must include irrigation management, pesticide management, nutrient management, salinity management, sediment and erosion control, and aquatic habitat protection. Farm Plan must identify and schedule implementation of practices to eliminate or minimize discharge of waste using best practicable treatment or control. Farm Plan nutrient management plan element must be certified by professional to be protective of water quality. Farm Plan must be updated at least annually. Upon notice by the Executive Officer, Farm Plan must be submitted to the Water Board." The staff overseeing the current Ag Waiver cannot manage the information submitted by farmers when they enrolled in 2005. The current database maintained by staff cannot even identify the location of every farm included in the NOI filings since 2005. It is impossible to imagine how CCRWQCB staff can manage, much less gain any knowledge from, a torrent of new data which is mostly unrelated to water quality. The new Ag Waiver should not require growers to submit business records, and should focus on understanding what on-farm practices will improve water quality.

Management Practice Implementation: Extensive operational practices must be implemented and documented. All irrigation, chemical use and fertilizer use must be documented and maintained in the farm plan. There are no specific requirements for practices which will directly improve water quality or reduce runoff. The detail of the proposed farm documentation is extensive.

- 1) **Irrigation:** Irrigation systems cannot result in tailwater discharge or percolation to groundwater beyond the root zone. All irrigation must be recorded by schedule, duration and frequency, including total water applied per crop.
- 2) **Pesticides:** Requirements include: method of counting pests, use of predictive models, follow UCI PM guidelines and identification of all pesticides used, with

usage records. There are also pesticide spray restrictions prohibiting use within 50' to 150' of any surface waterbody.

- 3) **Nutrient:** Requirements include: crop nutrient demand for each crop, water applied, monthly application records, well water testing, estimates of excess fertilizer applied and residual fertilizer at the end of the growing season. The nutrient portion must also be certified by a crop advisor. No foliar fertilizer applications will be allowed within 72 hours before or after a rain event.

Such demands show no understanding of modern commercial agriculture. There is *no* research for most crops which identifies the crop's nutrient demand. For those few crops with any nutrient studies, the researchers who conducted the studies have repeatedly tried to explain to CCRWQCB staff that local soil, topographic and climatic variability make it impossible for a farmer to determine by reference to a study what the optimum nutrient application should be at any given time. Certified Crop Advisors provide a necessary advisory service to growers, however, they are not trained to understand the consequences of nutrients in runoff, and should not become a mandated additional expense for farmers. In order to prevent salt buildup in the soil, water must pass below the root zone. IPM is a well developed theory which is based on having a group of chemical options available to growers. It is a meaningless concept if there is only one product which can control a pest. Most of the remaining proposed requirements have equally serious shortcomings, and are not designed to improve water quality, only to generate more paperwork.

Some growers have been singled out by the Draft Waiver. **Tailwater:** Every monitoring and practice implementation requirement is focused on farms with irrigation runoff (tailwater). **Tile drains:** This form of tailwater will be difficult to limit without loss of very productive farm land if drains are capped. **Nurseries and Greenhouses:** Greenhouses with impermeable floors have to apply for a permit (WDR) and are not subject to the waiver. Nurseries with dirt or gravel floors have specific requirements, including a requirement that nursery operators must "prevent rainwater from coming into contact with containerized plants." On its face this requirement is preposterous.

On Farm Monitoring: The CMP will have to test for many more constituents and the cost of conducting the CMP will increase by over \$200,000 per year, without any improvement in the quality or breadth of data produced.

All growers, regardless of current practices or potential to cause off-farm water quality impairments, will be required to conduct an *Individual Discharge Characterization Monitoring* report. All growers that cannot eliminate tailwater will have to conduct *Individual Discharge Monitoring*. The Individual Monitoring constituents and frequency are uncertain. It will be reported quarterly. Indeed CCRWQCB staff *forgot* to prepare the MRP to support their Draft Waiver. Without this document it is impossible to understand the imagined on-farm monitoring program.

All monitoring is to be submitted to CCRWQCB, apparently quarterly. The CCAMP system cannot deal with existing data submittals from established organizations. It cannot feasibly receive electronically data from over 10,000 farms every quarter. There is no reason to require farmers to spend money and submit data which will not be assimilated or read.

Proposed Timeline: The Draft Waiver contains a series of short term timelines, like enrollment, submission of on farm monitoring, 3 months, farm plan submission upon request, 30 days, and submission of a conceptual plan for groundwater monitoring, 2 years. The most important are:

- 1) Eliminate irrigation runoff, both tailwater and tile drains – 2 years. Reduce by 50% in 1 year and 75% in 18 months.
- 2) Eliminate toxicity in irrigation runoff – 2 years
- 3) Eliminate sediment and turbidity – 3 years
- 4) Eliminate nutrient and salts in irrigation runoff – 4 years
- 5) Protect existing aquatic habitat – immediately
- 6) Complete planting riparian buffers – 4 years, with 1/3 protected in 2 years and 2/3 in 3 years.
- 7) Eliminate or minimize nitrate and salt in groundwater discharges – 6 years

With the exception of the requirement for enrollment and submission of current farm information, each of these suggested timelines are grossly unrealistic. Farmers have been working to reduce irrigation and runoff for years, to suggest that all tailwater be eliminated in two years is fanciful. No agricultural researcher has ever found a way to eliminate tile drain discharge. Tile drains are an important requirement for some of the best farm land in the world. No government, anywhere, ever, until staff's Draft has suggested that its society should abandon its best and most productive farm land. It would be far better to give growers with tile drains and tailwater sufficient time to try newly developed methods which may improve water quality than to fallow the best farmland.

Groundwater is a very difficult issue. Groundwater aquifers are incredibly complex. Dairies which existed throughout the region fifty years ago are presently impacting the quality of water in subterranean aquifers today. Some of the counties within the region have extensive research dealing with their major aquifers, other counties have little data on aquifers. Most of the research has dealt with the height of water tables and/or salt water intrusion. Little research has been conducted on the causes or sources of pollution. Again, while staff wishes that agriculture comes up with a proposal for groundwater in two years, this is not possible given the lack of knowledge about the sources of impairment, the risks of certain practices or the impact of modern farming practices. It would be far better to rely on existing county agencies to continue their ongoing work than to create a new structure to deal with groundwater. **Mandatory Riparian and Aquatic Habitat:** No channel clearing is allowed except for agricultural ditches. This requirement will end flood control and local maintenance of channelized streams. There is no acknowledgement that the county or other district may be responsible for stream and culvert

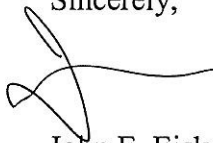
Draft Waiver
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Page 5

maintenance. There is no recognition of increased erosion, and loss of land, which will occur if farm ditches are not maintained. Only by allowing maintenance of farm ditches can growers work to reduce the discharge of sediment.

Buffer Requirements: *This requirement has nothing to do with water quality.* To require growers to plant a buffer of 50 to 100 feet from the “top of the bank in each direction” is a taking of their land without compensation. Furthermore there is no scientific basis provided, nor does any exist, which supports mandatory buffers as improving water quality in agricultural areas.

The Santa Cruz County Farm Bureau will oppose the imposition of any regulation which limits the ability of a grower to farm on all of their land. It, and other agricultural associations, will resolutely assert farmers property rights. There is no reason to include a land use restriction in the Ag Waiver. Elimination of these provisions will allow all parties to have meaningful discussions on how to improve water quality.

Sincerely,

A handwritten signature in black ink, appearing to read 'John E. Eiskamp', with a stylized flourish extending to the right.

John E. Eiskamp
President

JEE/rk



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

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April 1, 2010

Via US Mail and Email

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Jeffrey S. Young, Chairman of the Board
Roger Briggs, Executive Officer
California Regional Water Quality Control Board
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San Luis Obispo, California 93401

Re: *Comments in Response to Preliminary Staff Recommendations for an Agricultural Order to Control Discharges from Irrigated Lands*

The California Farm Bureau Federation is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 81,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

On behalf of the Santa Barbara County Farm Bureau, the San Luis Obispo County Farm Bureau, the Monterey County Farm Bureau, the San Benito County Farm Bureau, the Santa Cruz County Farm Bureau, the Santa Clara County Farm Bureau, and the San Mateo County Farm Bureau, the California Farm Bureau Federation ("Farm Bureau") respectfully presents the following concerns regarding the Preliminary Staff Recommendations for an Agricultural Order to Control Discharges from Irrigated Lands and accompanying Staff Report (hereinafter "Staff Draft Waiver") released on February 1, 2010. Farm Bureau has many concerns with Staff's Draft Waiver and Staff Report.¹

¹ The Preliminary Draft Waiver and Staff Report consist of many different parts, all of which are objectionable. The actual "waiver" is set forth in the Preliminary Draft Agricultural Order No. R3-2010-00XX and consists of 25 pages and 141 findings. The inaccuracy and unlawfulness of the findings are too many to identify here. Farm Bureau reserves the right to provide additional comments and concerns in the future.

Agriculture is one of the most important industries in the Central Coast Region because of the ability to produce large quantities of readily available food and fiber, the substantial economic benefits it provides to the Region and the State, and the number of workers it employs which leads to significant positive impacts to both the Region's and State's labor force. Farm Bureau members of the Central Coast agricultural community recognizes agriculture's importance and necessary role in the State and Region. Additionally, they recognize that the quality of agricultural water discharges can and will improve through implementation of on-farm practices.

The true goal of the Conditional Ag Waiver is to improve water quality over time. The State Water Code and the Regional Board Basin Plan provide authority for the Regional Board to impose regulations on dischargers to improve water quality. Farmers are equally concerned about water quality and the environment. However, there is no need for the Regional Board to impose arbitrary restrictions on commercial agriculture so long as farmers take necessary steps to demonstrate water quality improvement over a scientifically feasible timeline with intermediate milestones.² In order to reach this goal, the primary focus of maintaining and improving water quality over time should remain. To aid in reaching this goal, the Regional Board should evaluate water quality data collected and use such data to implement and adjust management practice implementation. The process of designing and adopting a new Ag discharge program will not be simple or quick. Further collaboration between the Regional Board and agriculture will be necessary to develop a workable long term solution. The Farm Bureaus hope the Regional Board will proceed with the development of a long term program rather than conditional waivers limited to five year terms.

Staff's Draft Waiver contains stringent new conditions that will subject growers in the Region to the most rigorous regulatory program in the state. The Waiver contains duplicative regulations concerning existing perennial, intermittent, and ephemeral streams along with riparian and wetland area habitat. It includes strict controls for the use of pesticides which is already regulated by the Department of Pesticide Regulation and the California Department of Food and Agriculture. Riparian and wetland area habitat is already being regulated by a variety of different regulatory agencies including, but not limited to, the U. S. Fish and Wildlife Service, the Department of Fish and Game, the Army Corp of Engineers, and local land use regulations already in place. The Draft Waiver also contains numerous provisions that are improper, illegal, and exceed the Regional Board's statutory authority. Additionally, Farm Bureau is concerned that the Regional Board may fail to recognize that agricultural lands are a part of the physical environment, thus consideration of impacts to agricultural resources must be included as part of a proper California Environmental Quality Act ("CEQA") environmental review.

Failure to Comply with CEQA Requirements

The Regional Board has failed to comply with the provisions of the California Environmental Quality Act ("CEQA"), Cal. Pub. Resources Code §§ 21000 et seq. CEQA was enacted to address concerns about environmental quality in the State of California. CEQA establishes processes and procedures to ensure that California agencies complete an environmental analysis

² The agricultural community has been taking necessary steps to demonstrate water quality improvements.

and consider and disclose to the public the environmental impacts of a proposed project. (Cal. Resources Code, §§ 21000 et seq; Cal. Code Regs., tit. 14, § 15000 et seq.) CEQA's statutory framework sets forth a series of analytical steps intended to promote the fundamental goals and purposes of environmental review—information, public participation, mitigation, and governmental agency accountability. (Cal. Code Regs., tit. 14, § 15002.) Specifically, the Legislature's intent in enacting CEQA includes:

- Disclose potential environmental impacts of agency decisions to decision-makers and the public;
- Analyze and minimize environmental effects of projects before final approval;
- Foster public involvement in governmental decision making;
- Facilitate interagency coordination;
- Identify and mitigate significant effects; and
- Improve decision-making.

(See Pub. Resources Code, §§ 21001, 21001.1, 21002, 21003, 21006, 21064.) CEQA's intent and purpose foster informed public participation and decision-making. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 404.)

To date, the process and the development of the Staff's Draft Waiver has not been an open, collaborative, or transparent process. The lack of detail, supporting evidence, proper environmental analysis, and proper evaluation of alternatives effectively bars the public from providing meaningful and necessary information on the development of future agricultural discharge programs. Such action and inaction has not satisfied the intent of CEQA.

Agricultural Resources Must Be Considered During Environmental Review

Agricultural resources are an important feature of the existing environment of the State, and are protected under federal policies, such as the Farmland Protection Policy Act and National Environmental Policy Act ("NEPA"), State policies, and CEQA. Agriculture is the number one industry in California, which is the leading agricultural state in the nation. (Food & Agr. Code, § 802(a).) Agriculture is one of the foundations of this State's prosperity, providing employment for one in 10 Californians and a variety and quantity of food products that both feed the nation and provide a significant source of exports. (CALFED Final Programmatic EIS/EIR, July 2000, pg. 7.1-1.) In 1889, the State's 14,000 farmers irrigated approximately one million acres of farmland between Stockton and Bakersfield. By 1981, the number of acres in agricultural production had risen to 9.7 million. (Littleworth & Garner, California Water II (Solano Press Books 2007) p. 8.) More recently, the amount of agricultural land in the State has declined. From 1982 to 1992, more than a million acres of farmland were lost to other uses. Between 1994 and 1996, another 65,827 acres of irrigated farmland were lost, and this trend is expected to continue.

In order to preserve agriculture and ensure a healthy farming industry, the Legislature has declared that "a sound natural resource base of soils, water, and air" must be sustained, conserved, and maintained. (Food & Agr. Code, § 802(g).) Prior to negatively impacting agricultural lands, decision makers must consider the impacts to the agricultural industry, the

State as a whole, and “the residents of this state, each of whom is directly and indirectly affected by California agriculture.” (Food & Agr. Code, § 803.)

CEQA require analysis of significant environmental impacts and irreversible changes resulting from proposed projects. These include unavoidable impacts; direct, indirect, and cumulative effects; irreversible and irretrievable commitment of resources; relationships between short-term uses and long-term productivity; and growth-inducing impacts to the environment. Pursuant to CEQA, the physical environment includes agricultural lands and resources. Given the national and statewide importance of agriculture and the legal requirements of environmental review, Farm Bureau urges the Regional Board to properly assess all direct and indirect effects on the agricultural environment resulting from the proposed Staff Draft Waiver.

Agricultural Resources Must be Considered In a Legally Defensible CEQA Review

One of the major principles of the State’s environmental and agricultural policy is to sustain the long-term productivity of the State’s agriculture by conserving and protecting the soil, water, and air that are agriculture’s basis resources. (Food & Agr. Code, § 821(c).) As currently proposed, Staff’s Draft Waiver goes beyond its intent to maintain and improve the quality of waters of the state, and instead, imposes a highly burdensome, enforcement driven program, many aspects of which are beyond the Regional Board’s authority, that will negatively impact the ability to produce food and fiber and will lead to possible changes in the physical environment. It is foreseeable that such impacts have the potential to convert agricultural lands to other uses. This conversion would add to the existing statewide conversion of substantial amounts of agricultural lands to other uses, and may conflict with adopted plans of many local governments, including cities and counties, and existing habitat conservation plans or natural community conservation plans.

Of particular relevance is CEQA Guidelines Appendix G, section II, Agricultural Resources, which states the following:

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agriculture Land Valuation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optimal model to use in assessing impacts on agriculture and farmland. Would the project:

- (a) Convert prime farmland, unique farmland, or farmland of state-wide importance . . . to non-agricultural use?
- (b) Conflict with existing zoning for agricultural use or a Williamson Act contract?
- (c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland to non-agricultural use?

(Cal. Code Regs., tit. 14, Appendix G, section II, Agricultural Resources.) Any and all adverse environmental effects on agricultural resources resulting from the project, as well as cumulative

impacts that will occur over time, must be fully assessed and disclosed under CEQA, as well as avoided or mitigated as required by CEQA. Thus, proper environmental analysis of agricultural impacts must be considered.

The Regional Board Failed to Analyze Probable Physical Changes to the Environment

CEQA requires lead agencies to analyze the potential physical changes in the environment. For a waiver of waste discharges from irrigated lands, the analysis should consider numerous areas, including the physical impacts that would likely occur as a result of monitoring activities, the implementation of management practices to maintain the quality of waters or mitigate the impacts of agricultural wastes on the waters of the State, social and economic effects stemming from physical changes in the environment.³

CEQA requires agencies to consider a reasonable range of foreseeable methods of compliance. For each method, the agency must consider impacts, mitigation, alternatives, costs, and technical factors. (Pub. Resources Code, § 21100; Cal. Code Regs., tit. 14, §§ 15064, 15126.6.) Staff's Draft Waiver must consider the reasonably foreseeable consequences of adoption of the draft policy. Staff's Draft Waiver and accompanying "environmental analysis" fails to contain: an analysis of the reasonably foreseeable methods of compliance, the reasonably foreseeable environmental impacts of the methods of compliance, an analysis of reasonably foreseeable feasible mitigation measures, and an analysis of reasonably foreseeable alternative means of compliance within the rule or regulation.

A full description of monitoring activities proposed under Staff's Draft Waiver is not provided. Thus, it is premature for Staff to conclude that such activities will not have a physical change on the environment, and/or a possible significant effect. (See Attachment 5.) Additionally, some management practices may require physical changes to the environment. For example, a physical change in the environment may occur if structural controls to reduce the discharges of waste to waters of the State are implemented. Even with the lack of details, reasonably foreseeable means of compliance may have an adverse impact on the environment. Thus, by failing to consider any of the above, the Regional Board fails to comply with CEQA.

Regional Board's Consideration of Project Alternatives Is Not Adequate

The Regional Board must consider all reasonable alternatives to the project. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 400; ["The foregoing CEQA provisions and Guidelines make clear that 'One of its [an EIR's] major functions . . . is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.' (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197 [132 Cal.Rptr. 377, 553 P.2d 537].)"] The Guidelines require the evaluation of a "reasonable range of alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives." (Guidelines, § 15126, subd. (d).) These alternatives must be discussed, 'even if these alternatives would impede to some degree the attainment of the project objectives, or would be

³ Discussed infra.

more costly.’ (Guidelines, § 15126, subd. (d)(3).)” “‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (Cal. Code Regs., tit. 14, § 15364; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 402.) Alternatives to be evaluated must be potentially feasible and should feasibly attain most of the basic objectives of the project. (Cal. Code Regs., tit. 14, § 15126.6.)

Given CEQA’s requirements, the Regional Board should consider feasible alternatives, especially those alternatives to be submitted by the public and the agricultural community. However, within the Preliminary Draft Report, one page of text is devoted to a brief and vague outline of possible alternatives of the project. (Attachment 5, pp. 7-8.) Three “alternatives” are inadequately described in a conclusory nature in which all three “alternatives” are not recommended. Such “brief” treatment of so called alternatives is legally deficient, as no project alternatives are fully analyzed, described, evaluated, or provided in detail to allow the public to provide meaningfully comments. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 404; [“The key issue is whether the selection and discussion of alternatives fosters informed decisionmaking and informed public participation.”]; Cal. Code Regs., tit. 14, § 15126(d)(5).) This failure to properly consider project alternatives cannot be upheld under CEQA and the “rule of reason” for considering alternative project components and regulatory requirements.

Reliance on the 2004 Negative Declaration is Unreasonable and Invalid

Staff’s Draft Waiver is significantly different and drastically distinct from the 2004 Conditional Waiver. As stated in the Preliminary Draft Report, specific changes in Staff’s Draft Waiver include:

- Extends effective term of the conditional waiver to 2015.
- Revises enrollment and termination process (new information required).
- Requires submittal, certification, and revision (if needed) of Farm Plans.
- Expands contents of Farm Plan, including management practices to eliminate or reduce pollution loading and discharges.
- Adds management practices implementation schedule.
- Requires riparian buffer (or alternative aquatic habitat protection) setback in certain circumstances.
- Prohibits disturbance of wetlands and streams.
- Removes education as a requirement.
- Adds monitoring to facilitate compliance evaluation.
- Adds definitions, references, and expanded findings to clarify and support the requirements specified in the Preliminary Draft Irrigated Ag Order.

(Attachment 5, pp. 2-3.) In addition to the above revisions and addition, Staff’s Draft Waiver deviates significantly from the 2004 Conditional Waiver. Although both waivers are conditional waivers of waste discharge limited to 5 year periods of time and regulate discharges from irrigated lands, the two waivers are extremely different in scope, regulatory focus, requirements, breadth, enforcement, intent, types and contents of monitoring, types of discharges to be

regulated, reporting requirements, as well as other differences. Thus, reliance on the 2004 Negative Declaration to fully determine and analyze the new environmental impacts of Staff's 2010 Draft Waiver is inappropriate and improper.

In addition to significantly altering the scope of the waiver, significant new information has been gathered and is now available since the completion of the 2004 Conditional Waiver. Given this significant information and substantial changes to the current Conditional Waiver, which should constitute a new project under CEQA, Staff cannot rely upon the environmental analysis that was completed in 2004. Notwithstanding the fact that reliance on a previous project that is distinct from the project at hand is improper, any changes to the "project" after environmental analysis constitute "significant new information" that requires additional environmental analysis.⁴

The Initial Study and Environmental Checklist is Inadequate and Conclusory In Nature

Under CEQA, it is the responsibility of the lead agency to determine whether an EIR shall be required. (Cal. Code Regs., tit. 14, § 15365.) The initial study is the preliminary analysis that the lead agency prepares in order to determine whether the project might have a significant effect on the environment. (*Friends of Davis v. City of Davis* (2000) 83 Cal. App. 4th 1004, 1016, ["the task of the lead agency is not to determine whether the project will have a significant effect on the environment, but only *whether it might have such an effect.*" (emphasis added)].) When the agency determines that an EIR is unnecessary, the initial study serves the purpose of "providing documentation of the factual basis" for concluding that a negative declaration will suffice. (Cal. Code Regs., § 15063(c)(5).)

Specifically, the purposes of an initial study are to:

- (1) Provide the Lead Agency with information to use as the basis for deciding whether to prepare an EIR or a Negative Declaration.
- (2) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a Negative Declaration.
- (3) Assist in the preparation of an EIR, if one is required, by:
 - (A) Focusing the EIR on the effects determined to be significant,
 - (B) Identifying the effects determined not to be significant,
 - (C) Explaining the reasons for determining that potentially significant effects would not be significant, and

⁴ CEQA Guidelines section 15088.5(a) states that "significant new information" includes:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

- (D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.
- (4) Facilitate environmental assessment early in the design of a project;
 - (5) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment;
 - (6) Eliminate unnecessary EIRs;
 - (7) Determine whether a previously prepared EIR could be used with the project.
- (Cal. Code Regs., tit. 14, § 15063(c).)

The initial study serves to document the agency's reasoning in reaching its conclusion to prepare an environmental impact review document or a negative declaration. Here, Staff's Initial Study fails to "disclose the data or evidence upon which the person(s) concluding the study relied. Mere conclusions simply provide no vehicle for judicial view." (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, 171.) By failing to disclose all data and evidence relied upon, the Regional Board is abusing its discretion and failing to comply with CEQA. (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171, ["Section 1094.5, subdivision (b), states that '[abuse] of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.' The Supreme Court has elaborated that '. . . implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles, supra*, 11 Cal.3d at p. 515; see *Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 429-431 [129 Cal.Rptr. 902].)"]

Conclusory comments in support of environmental conclusions are generally inappropriate. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 404.) Staff's Initial Study is fundamentally and basically inadequate and conclusory in nature, precluding meaningful public review and comment. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043, 1051; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404; Cal. Code Regs., tit. 14, § 15063(c); see Cal. Code Regs., tit. 14, § 15088.5, [regulations apply substantially to initial studies and negative declaration thresholds for recirculation as well].)

In the Initial Study, the Regional Board merely concludes that the Draft Waiver will not cause any effects "more severe than discussed in the 2004 Environmental Analysis/Negative Declaration" and, therefore, will protect waters of the State. (Attachment 5, p. 1.) The Regional Board provides no citation or evidence for such conclusions. This sort of conclusory statement provides "no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives." (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842, quoting *Silva v. Lynn* (1973) 482 F.2d 1282, 128; see also *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404, ["but neither can we countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials" (emphasis added)]; *City of Redlands v. County of San*

Bernardino (2002) 96 Cal.App.4th 398, 415, [“The County's conclusory evaluation of the amendments fail to support its decision to adopt a negative declaration.”].)

Given that the Regional Board's Initial Study relies on conclusory language, lack of evidence, unidentified and unsubstantiated claims, and unlike comparisons to support its findings that no significant environmental affects will occur, the public's ability to provide input, to collaborate with, and to aid in finding solutions to maintain and/or improve water quality is largely restricted and makes it impossible for the public, many of whom have actively asserted a keen and sophisticated interest in the development of revised/new discharge requirements, to fully participate in the assessment of project impacts and alternatives associated with the project. (See *Mountain Lion Coalition v. Fish & Game Comm.* (1989) 214 Cal. App. 3d 1043, 1051.)

The Initial Study Predisposes the Project's Outcome

As discussed *infra*, the Initial Study and the Staff Report fail to identify and mitigate the Project's significant impacts, fail to provide proper analysis of alternatives, and are improperly predisposed toward Staff's Draft Waiver. (See Attachment 5 Initial Study, pp. 7-8.)

Staff's findings improperly determine that any alternative besides Staff's preferred “Draft Waiver” is infeasible. (Attachment 5, pp. 7-8.) Regional Board Staff must study and evaluate a reasonable range of alternatives and present a fair and unbiased analysis of such alternatives. There are dozens of different ways to formulate methods to maintain and/or improve water quality, if needed, including proper analysis of alternatives yet to presented to the Board. Public alternatives will be submitted to the Board on April 1, 2010, two full months after Staff's conclusory predetermination of the preferred project. Staff should not determine its preferred alternative until after proper analysis of all alternatives.

The Draft Staff Waiver Contains an Inadequate Assessment of Significant Impacts and Effects on the Environment

The CEQA Guidelines define a “significant effect” as: “... a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic and aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.” (Cal. Code Regs., tit. 14 § 15382; see also Pub. Resources Code, § 21068.)

The CEQA Guidelines further state that, “An ironclad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.” (Cal. Code Regs., tit. 14 § 15064.) Appendix G of the CEQA Guidelines describes impacts that the California Resources Agency has determined are normally considered significant. These guidelines require that physical changes in the environment be evaluated based on factual evidence, reasonable assumptions supported by facts, and expert opinion based on fact. Given that many factors have to be analyzed and significant effects and impacts should be determined

on a case-by-case basis, the Regional Board cannot rely on previous antiquated environmental analysis to conclude possible potential impacts to Staff's Draft Waiver. Rather, the Regional Board must review all scientific data and facts, especially information collected since the initiation of the 2004 Conditional Waiver, prior to determining the Staff's Draft Waiver's potential to significantly effect or impact the environment.⁵

The Draft Staff Waiver Fails to Consider Significance of Social and Economic Impacts and Cumulative Effects

Although impacts that are solely economic in nature do not constitute "significant effects on the environment," economic or social impacts that will or have the potential to cause a physical change should be considered. (Cal. Code Regs., tit. 14, §§ 15064(e), 15131.) The term "significant effect on the environment" is defined in Section 21068 of CEQA as meaning "a substantial or potentially substantial adverse change in the environment." (Pub. Resources Code, § 21068.) This focus on physical changes is further reinforced by Sections 21100 and 21151. (Discussion following Cal. Code Regs., tit. 14, § 15131.) Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. (*Ibid.*) Thus, in certain situations such as the adoption of an expansive regulatory irrigated lands discharge program, economic and social effects of the project must be used to determine the significant effects on the environment. (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, 170, ["The lead agency shall consider the secondary or indirect environmental consequences of economic and social changes."].) Since such effects were not considered in the Initial Study, the document is incomplete and flawed.

In *Citizens Association for Sensible Development of Bishop Area v. Inyo*, the court held that "economic or social change may be used to determine that a physical change shall be regarded as a significant effect of the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment." ((*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, 170.)

Staff's Draft Waiver proposes dramatic and severe impacts on the agricultural industry, which will have a significant effect on the economic and social environment of the Region. Such impacts include negative economic consequences, the possibility of eliminating agricultural crops produced in the area, loss of jobs, loss of food supply, loss of prime agricultural lands,

⁵ Water quality regulations that aim to improve environmental quality can have unintended consequences that harm the environment and natural resources. The reallocation of water from one location to another, to meet water quality regulations, may reduce the well-being of fish and wildlife dependent on the water in the source region. Reduction of use of chemical pesticides that reduce farm productivity may lead to an increase in utilized land use and expansion of the utilized land base to wilderness areas. Diversion of water resources to meet environmental quality objectives may reduce the capacity to utilize this water in provision of environmental amenities. Thus, proper environmental analysis is needed.

economic collapse of local communities, changes the landscape and land uses, loss of wildlife habitat, loss of groundwater recharge areas, as well as other social and economic impacts. In addition to direct impacts, indirect impacts and consequences, cumulative⁶ consequences are reasonably foreseeable and must be analyzed.

The Draft Staff Waiver Fails to Evaluate Economic Costs

The requirement to consider economics under Porter-Cologne Water Quality Control Act (“Porter-Cologne”) is absolute. Water Code, section 13141 explicitly mandates:

State policy for water quality control adopted or revised in accordance with the provisions of this article, and regional water quality control plans approved or revised in accordance with Section 13245, shall become a part of the California Water Plan effective when such state policy for water quality control, and such regional water quality control plans have been reported to the Legislature at any session thereof.

However, prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan.

(Wat. Code, § 13141.) Before a Regional Board can impose waste discharge requirements or conditioned water quality certification for discharges from irrigated lands, Porter-Cologne requires that it “shall take into consideration” the following factors: “the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.” (Wat. Code, § 13263.) Section 13241 in turn lists six “factors to be considered,” including “economic considerations” and “water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.” (Wat. Code, § 13241.)

Anticipated program implementation costs to the agricultural community include increases in potential fees, management practice implementation, monitoring costs, report preparation, and cost for education, as well as other costs. Given that the impacts of water quality regulations frequently take years to materialize, the Regional Board should analyze the economic costs and impacts within a dynamic framework taking into account the projected changes in the economic situation *over time*.

In addition to direct costs imposed on the agricultural community, the Regional Board should evaluate indirect costs, including the economic consequences that are transmitted via market interactions to other groups, such as consumers. Water quality regulation, such as Staff’s Draft Waiver, increases the average cost of production and has a direct negative effect on the producer and the consumer through the resulting increase in variable costs and the output price. The

⁶ “Cumulative impacts” are “two or more individual effects which, when considered together, are considerable or....compound to increase other environmental impacts. (Cal. Code Regs., tit. 14, § 15355.)

propagation of the impacts of a regulation through the economy is well documented and can be quantified by economic analysis.

The Scope of Staff's Draft Waiver is Improper

Staff's Draft Waiver seeks to greatly expand the current Conditional Waiver, venturing from a waiver that aims to improve water quality to a waiver that is unlawful, exceeds Regional Board authority, and contains significant and prescriptive requirements that gravely impact growers and agriculture in the Central Coast.

Given the size of the Region and the variety in topography, geography, water conditions, weather conditions, and crops produced, a one size fits all approach is not appropriate. What makes sense basin-wide may not make sense in a particular location, or for a portion of a particular stream. The Regional Board should consider local conditions, both economic and environmental, which can vary widely throughout the Region. In addition, all types of agricultural practices cannot be regulated in the same manner. Staff must account for these differences.

The Staff's Draft Waiver claims that "[t]he agricultural industry must implement the most effective management practices (related to irrigation, nutrient, pesticide and sediment management) that will most likely yield the greatest amount of water quality protection, and verify their effectiveness with on-farm data." (Preliminary Draft Report, p. 7.) This statement runs directly contrary to the legislative intent and purpose of the Porter-Cologne Act. Specifically, Porter-Cologne requires the Regional Board to regulate "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters" (Wat. Code, § 13000.) Thus, any regulation of the agricultural industry must be reasonable considering a number of factors, including cost. Effectiveness alone is not a legal requirement in Porter-Cologne.

Improper Regulation of Nursery Operations

Staff's Draft Waiver expands the current Conditional Waiver to include nurseries, especially commercial nurseries, nursery stock production, and greenhouse operations. Such operations with "soil floors that do not have point-source type discharges, and are not currently operating under individual WDRs," are now regulated. (Attachment 3, p. 5.)

Staff's Draft Waiver contains many undefined and potentially highly impractical requirements for nursery operations. Of particular concern are: (1) Regulation of non-storm water discharge that must have no toxicity, drinking water standards for nitrates, low turbidity, and temperatures below 68°F; (2) Keeping rainwater and/or stormwater separated from wastewater and irrigation runoff; (3) Having to prevent all rainwater from coming into contact with containerized plants. Such requirements are unlawful and infeasible. Prior to mandating industry specific requirements, the Regional Board should gather and utilize nursery specific data and data specific to the Region. This Region is very different from areas throughout the state. Additionally, the geography, climatology, and topography within the Region itself varies substantially. Thus, proper and appropriate data is needed.

Staff's Draft Waiver Exceeds the Regional Board's Statutory Authority and Cannot Regulate Pesticides

California has regulated pesticides for over a century. The California Legislature has established a comprehensive body of law to control every aspect of pesticide sales and use. The California Department of Pesticide Regulation ("DPR") is mandated by law to protect the public health and environment by regulating pesticide sales and use and by fostering reduced-risk pest management. (Food & Agr. Code, §§ 11454, 11454.1, 12981.)

This strict oversight begins with product evaluation and registration and continues through statewide licensing of commercial applicators (including Appellant), dealers, and consultants, environmental monitoring, and residue testing of fresh produce. DPR currently has a staff of over 400 employees with an annual budget of approximately \$70 million. (*Governor's Budget 2010-11, Proposed Budget Details*, <www.ebudget.ca.gov/stateagencybudgets> [as of March 28, 2010].) This work is augmented by approximately 400 biologists working for County Agricultural Commissioners in all 58 counties on local pesticide enforcement. (California Department of Pesticide Regulation, *A Guide to Pesticide Regulation*, p. 1 <<http://www.cdpr.ca.gov/doc/pressrls/dprguide/htm>> [as of March 28, 2010].)

The California Food and Agriculture Code, division 7, chapter 2 and implementing regulations promulgated at title 3 of the California Code of Regulations, division 6 establish this comprehensive program under which DPR regulates the manufacture, distribution, sale and use of pesticides. The program seeks to provide for the proper, safe, and efficient use of pesticides essential for production of food and fiber, and to protect the public health and safety, as well as the environment, from harmful pesticides by ensuring proper stewardship of those pesticides. (*Californians for Alternatives to Toxics v. California Department of Pesticide Regulation* (2006) 136 Cal. App. 4th 1049, 1057, citing Food & Agr. Code, §11501.)

DPR oversees a multi-tiered enforcement infrastructure. While the Department has primary responsibility for enforcement of pesticide laws, the Pesticide Enforcement Branch and the Pest Management and Licensing Branch work with the County Agricultural Commissioners to enforce regulations at a local level. (California Department of Pesticide Regulation, *A Guide to Pesticide Regulation*, p. 45 <<http://www.cdpr.ca.gov/doc/pressrls/dprguide/htm>> [as of March 28, 2010].)

Given the need for proper and effective oversight of pesticide use, pesticide regulation is a matter of "statewide concern" that must be regulated from the state level. (Food & Agr. Code, § 11501.5(a).) The Legislature made this unmistakably clear by commencing the section with "this division and Division 7 (commencing with Section 12501) are of statewide concern and occupy the whole field of regulation." (*Ibid.*) The plain meaning of the words within this sentence illustrates the Legislature's intent for state regulation of pesticides and such regulation to be conducted by the Department of Pesticide Regulation and not the Regional Water Quality

Control Boards. Thus, the imposition of pesticide buffers for ground and aerial application is improper and exceeds statutory authority.⁷ (See Attachment 3, pp. 63-64.)

Intellectual Property, Trade Secrets, and Proprietary Information Must Remain Confidential

Staff's Draft Waiver expands the nature, scope, contents, and use of the Farm Water Quality Management Plan. Requirements now include additional reporting, including detailed management practices and implementation practices. In addition, upon request, Farm Plans must be sent to the Regional Board. Notwithstanding the issues regarding additional reporting and the management implementation practices report, submittal of proprietary information to the Regional Board is disconcerting. Information within farm plans contains intellectual property, trade secrets, and proprietary information, much of which has no correlation or nexus to the Regional Board's authority to regulate water quality. Prior to any request for the submittal of the entire farm plan, the Regional Board should make a finding showing the necessity of the data and information required to be submitted and how such data is related to water quality. Such information must remain confidential. The Porter-Cologne Act explicitly provides protection to growers for intellectual property, trade secrets, and proprietary information that may be within a farm plan or report:

When requested by the person furnishing a report, **the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies.** However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

(Wat. Code, § 13267(b)(2) (emphasis added).) Thus, the Regional Board must acknowledge that farm specific information, including pesticide application, irrigation practices, crop rotations, best management practices, etc., are intellectual property, trade secrets, and proprietary information that must remain confidential.

The Regional Board is Attempting to Circumvent DFG's Longstanding Streambed Alteration Requirements

Many of the activities and impacts sought to be regulated are currently directly or indirectly regulated through local governments, federal, and state agencies. For example, the Department of Fish and Game ("DFG") is responsible for conserving, protecting, and managing California's fish, wildlife, and native plant resources. To meet this responsibility, the Fish and Game Code requires an entity to notify DFG of any proposed activity that may substantially modify a river, stream, or lake. (Fish & Game Code, § 1602.) Persons must notify DFG prior to any activity that will:

⁷ Additionally, the prescription of pesticide buffers, besides not being within the Regional Board's jurisdictional authority, equates to a mandate of a specific management practice. Such mandates are not within the Regional Board's authority.

- Substantially divert or obstruct the natural flow of any river, stream or lake;
- Substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or
- Deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

(Fish § Game Code, § 1602.) Given DFG's authority to regulate activities such as channel clearing and other activities, actions included in Staff's Draft Waiver present significant risk of regulatory overlap and duplication and infringe upon the regulatory authority of DFG. Additionally, by including specific provisions within the Draft Waiver that regulate and control streambed alternation, clearing, maintenance, etc, the Regional Board is attempting to circumvent DFG's longstanding streambed alternation requirements. Thus, any expansion of an irrigated discharge waiver to include such activities is duplicative regulation and unnecessary.

The Regulation of Riparian and Wetland Area Habitat Areas Exceeds the Regional Board's Statutory Authority

Regulating land use is not within the purview of the Regional Board. The Water Code and the Basin Plan focus on water quality and activities which may impair water quality. As discussed within, while the Regional Board has authority to prohibit an act which may result in a discharge, the Board does not have authority to require an act which is unrelated to discharges to waters of the state. (Wat. Code, § 13360.) In addition to exceeding its jurisdiction, dictating certain land use practices and prohibitions amounts to a regulatory taking of land by restricting its use without any relationship to water quality. (See *Penn Central Transp. Co. v. City of New York* (1978) 438 U.S. 104; see Attachment 3, pp. 69-72, proposing minimum riparian buffer widths of 50 feet, 75 feet and 100 feet for tier 1, 2, and 3 streams, respectively.)

Notwithstanding the lack of authority, it is also premature to regulate wetlands and riparian habitats. Staff relies upon the State Water Resources Control Board's wetlands definition and "Wetlands and Riparian Area Policy," a policy that is currently still in its infancy and draft stages. (See Attachment 1, p. 26.) Inclusion or exclusion of managed wetlands and riparian areas should depend on the development and final outcome of the State Water Board's Wetlands and Riparian Areas Policy and definition of "wetland." Action prior to the creation of the policy is futile.

Additionally, through its section 1600 Streambed Alteration Program, DFG already regulates upland riparian areas the Regional Board now seeks to regulate. (Fish § Game Code, 1602.) Such duplicative regulation is both inefficient and unnecessary. Thus, any expansion of an irrigated discharge waiver to protect wetland and riparian areas is duplicative regulation and unnecessary.

The Regional Board Does Not Have Authority To Dictate Management Practices and Methods of Compliance

The Regional Board does not have the statutory authority to mandate specific management practices. (Wat. Code, § 13360(a).) The Regional Board has the authority to adopt water quality

control plans, water quality objectives to “ensure the reasonable protection of beneficial uses,” and waste discharge requirements. (Wat. Code, §§ 13240, 13241, 13242.) However, it cannot dictate the management and business practices undertaken by a landowner to reach the applicable discharge goal. Specifically, the Water Code states:

No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.

(Wat. Code, § 13360(a).) Within the Initial Study, it states that the “Preliminary Draft Irrigated Ag Order does not specify management practices that must be implemented.” (Attachment 5, p. 16.) Unfortunately, this statement is incorrect since numerous times within the “Preliminary Draft Order” (Attachment 3), specific types of management practices are mandated.

Under the Preliminary Draft Order, the required Farm Plan would need to identify certain types of management practices including the use of integrated pest management (“IPM”). In fact, the Farm Plan would require a grower to maximize integrated pest management practices. Additionally, the Preliminary Draft Order requires specific management practices to control erosion and sediment, including maintaining crop residue or vegetative cover on the soil. However, the Regional Board has no authority to mandate or require the use of integrated pest management by individual growers or the use of specific types of crop covers.

The Regional Board’s Regulation of Groundwater is Improper

As outlined in Staff’s Draft Waiver, the Regional Board’s proposed manner of groundwater regulation is improper. The Regional Board may not require dischargers to construct and maintain ponds, reservoirs and other containment structures to avoid leaching of waste to groundwater. (See Attachment 3, p. 69.) As discussed previously, prescriptive requirements such as these are considered to dictate the manner of compliance, which is unlawful and improper. (Wat. Code, § 13360.)

In formulating an irrigated lands program, the Regional Board should seek to develop the most efficient program that accomplishes water quality goals. The most efficient and effective methods for achieving these goals do not include the exploratory regulation of groundwater. Water is a critical resource for all of California, especially for agriculture. Without water, irrigated agriculture in the Central Coast will not exist. As a result, a high priority should be placed on efforts to assure that water management and monitoring programs are appropriately tailored to include only the regulation of surface water and equitably distribute regulatory costs across *all* waste dischargers, including those outside the agricultural community.

Groundwater monitoring and regulation is fraught with complexity and is very different than surface water quality monitoring. Monitoring will require a lot of time, expense, and science to identify and solve pollution problems since the ability to obtain good water quality data is difficult due to percolation and groundwater movement. Additionally, detecting pollutants in

groundwater and then identifying the source will be a time consuming, exploratory, and difficult endeavor. Before any groundwater monitoring program should be imposed, the Regional Board and State Board should coordinate with other government agencies that are involved in groundwater quality programs, such as the Department of Pesticide Regulation, to avoid duplication and additional expense. Coordination is also needed in order to adequately assess groundwater resources. Using best available science, evaluation of groundwater supplies within the Central Coast must be completed, including mapping of hydrogeologic features; determination of accurate locations and altitudes of wells; accurate estimates of water-budget components; measurements of groundwater levels; collection and analysis of groundwater samples; analysis of numerical models of groundwater flow to evaluate potential effects of changes in land and water use; determination of aquifer storage; stream depletion; well interference; and concrete determination of sources of pollution.

Farm Bureau proposes that the Regional Board defer groundwater management activities to other appropriate agencies and entities that are responsible for the protection of groundwater resources at the local level. Groundwater quality issues are unique to groundwater basins and subbasins. Thus, such issues are best addressed and managed locally.⁸ Besides adequate local regulation, the Regional Board should avoid duplicative regulation among a number state agencies working on the same topic. Within the California Department of Pesticide Regulation, there exists the Ground Water Protection Program that regulates the use of certain pesticides found in ground water. (See Cal. Code. Regs., tit. 3, § 6800 et seq.) DPR's program is implemented and enforced by local County Agricultural Commissioners that are familiar with local groundwater conditions.

In light of the local agency efforts to manage groundwater resources, and the DPR regulatory activities that already exist, Farm Bureau recommends that the Regional Board recognize these activities and entities as the appropriate programs for addressing groundwater issues, and therefore determine that it is inappropriate, or at least premature, to adopt a new regulatory program for irrigated agriculture specific to groundwater. Additionally, it is within the Regional Water Board's authority to identify control actions recommended for implementation by others. (Wat. Code, § 13242(a).)⁹

The Aquatic Habitat Protection Requirements are Unlawful

The aquatic habitat provisions within Staff's Draft Waiver are unlawful and impractical for many reasons. The provisions result in an unconstitutional taking of private property, unlawfully dictate the manner of compliance, impede the authority of the Department of Fish and Game, prevent waterway maintenance activities for flood control, prohibit growers from complying

⁸ For example, local management occurs through voluntarily developed groundwater management programs with quality objectives pursuant to Water Code section 10750 et seq.

⁹ "Water quality objectives, we realize, may not always be readily enforceable. The statutory factors enumerated in section 13242, particularly the provisions for recommended action and time schedule, reflect the Legislature's recognition that an implementing program may be a lengthy and complex process requiring action by entities over which the Board has little or not control and also requiring significant time intervals." (*United States v. State Water Resources Control Board*, 182 Cal.App.3d 82, 122 (1st District COA, 1986).)

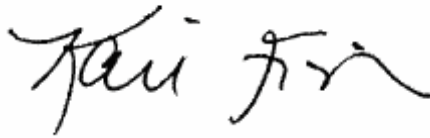
with buyer specifications that may be necessary for food safety reasons, and unlawfully require federal permits under the Clean Water Act for activities that are specifically exempt.

Conclusion

The agricultural community is committed to being stewards of the land and has attempted to work with the Regional Board on this matter since 2003. The agricultural community is fundamentally interested in ensuring the long term improvement of water quality in the region.

Given the diverse array of geography, topography, soil, microclimates, local conditions, and agricultural commodities grown in the Central Coast, water management and monitoring programs must be flexible and allow for necessary adaptations, both for localized areas and throughout the Central Coast. A one-size-fits-all approach to regulating all types of discharges from irrigated lands does not work in this Region due to the diversity of the Region that supports a corresponding variety of plant and animal communities and crop types. As currently drafted, Staff's Draft Waiver contains numerous flaws, areas of concern, exceedances of authority, and infeasible and improper regulations. Farm Bureau urges the Regional Board to revise the Draft Waiver in light of these concerns. Additionally, rather than continuing to amend and negotiate the contents of a conditional agricultural waiver every 5 years, Farm Bureau urges the Regional Board to pursue alternative regulatory vehicle alternatives including a long-term irrigated lands program.

Sincerely,

A handwritten signature in black ink, appearing to read "Kari Fisher", with a stylized, cursive script.

Kari E. Fisher
Associate Counsel